IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1451 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DILAJI BHARTHAJI VIHOL - Applicant(s)

Versus

DEPUTY COMMISSIONER OF POLICE & 1 - Respondent(s)

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Appearance :
MR NM KAPADIA for Applicant(s) : 1,
None for Respondent(s) : 1,
PUBLIC PROSECUTOR for Respondent(s) : 2,
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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 01/12/2005

ORAL JUDGMENT

1. Dilaji Bharthaji Vihol-externee through his wife Taraben-petitioner has filed this petition

challenging the order dated 25th July, 2005 passed by respondent No.1 under the provisions of Bombay Police Act,1951 (hereinafter referred to as 'the Act') and has, further, prayed for appropriate writ or mandamus as well as certiorari to quash and set aside the order passed by respondent No.2, externing the petitioner from the City of Ahmedabad Rural, Gandhinagar, Kheda and Mehsana districts in this behalf.

2. The present petition was filed on 11th October, 2005 and my learned brother Hon'ble Mr. Justice A.S. Dave issued RULE on 21st October, 2005 and the same was made returnable within four weeks and that is why this matter has come up before this Court.

3. I have heard, Mr. N.M. Kapadia, learned Advocate for the petitioner in this behalf. He has invited my attention to show-cause notice dated 16.04.2004 under Section 56B of the Bombay Police Act. Thereafter, petitioner has filed a reply dated 17.05.2004. He has further alleged in the petition that final hearing took place before the respondent No.1 in August, 2004 but no final order was passed by

the authority in this behalf, immediately.

4. Meanwhile, Police Commissioner, city of Ahmedabad passed a detention order dated 01.11.2004 exercising powers conferred under Section 3(1) of the Gujarat Prevention of Anti-social Activities Act, 1985 (for short 'PASA Act'). The petitioner challenged the said order by filing S.C.A. No.15451 of 2004 and my learned brother Hon'ble Mr. Justice J.R. Vora by his judgment dated 10.03.2005 pleased to allow the matter and quash and set aside the order of detention passed under the provisions of PASA Act.

5. The said order has been placed before this Court in this behalf. It has been further submitted that on 25.07.2005 respondent No.1 passed the order of externment against the petitioner, externing him from Ahmedabad and contiguous districts in this behalf under the provisions of Bombay Police Act, 1951 for which hearing took place in August,2004. So the order has been passed after eleven months from the date of last hearing.

6. Being aggrieved and dissatisfied with the

said order, petitioner filed an appeal before state government through Deputy Secretary, Home Department on 31.08.2005 for obtaining stay before respondent No.2 and same was refused without giving reasons. On 13th September, 2005 a petition was submitted with final written arguments with some judgments of this Court before respondent No.2. Respondent No.2 by its judgment and order dated 03.10.2005 pleased to dismiss appeal without considering the judgment of this Court in this behalf.

7. Being aggrieved and dissatisfied with the same, petitioner has filed present petition before this Court on several grounds. Though, learned Advocate for the petitioner has raised several grounds, but, only one ground is sufficient to dispose of this petition. In this case the matter was heard in August, 2004 and the authority has passed final order on 25th July, 2005, and therefore, there is considerable delay in passing the said order. So, only on this ground this order is liable to be set aside.

8. For appreciating the said contentions learned Advocate for the petitioner has also invited my

attention to Section 56 of the Act which reads as under,

> 8.1 “(56). Removal of persons about to commit offence.: Whenever it shall appear in areas for which a Commissioner has been appointed under Section 7 to the Commissioner and in other area or areas to which State government may, by notification in the Official Gazette extend the provisions of this Section, to the District Magistrate, or the Sub-Divisional Magistrate empowered by the State Government in that behalf (a) that the movements or acts of any person are causing or calculated to cause alarm, danger or harm to person or property, or (b) that there are reasonable grounds for believing that such person is engaged or is about to be engaged in the commission of an offence involving force or violence or an offence punishable under Chapter XII, XVI or XVII of the Indian Penal Code, or in the abetment to any such offence, and when in the opinion of such officer witnesses are not willing to come forward to

give evidence in public against such person by reason of apprehension on their part as regard the safety of their person or property, or that an outbreak of epidemic disease is likely to result from the continued residence of an immigrant, the said officer may, by an order in writing duly served on him or him or by beat of drum or otherwise as the think fit, direct such person or immigrant so to conduct himself as shall seem necessary in order to prevent violence and alarm or the outbreak or spread of such disease or to remove himself outside the area within the local limits of his jurisdiction [or such area and any district of districts, or any part thereof, contiguous thereto] by such route and within such time as the said officer may prescribe and not to enter or return to the said area [or the area and such contiguous districts, or part thereof as the case may be,} from which he was directed to remove himself."

9. The learned Advocate has also relied upon Section 57 which provides for removal of persons

convicted of certain offences. Learned Advocate for the petitioner has also relied on Section 58 which provides for operation of orders under Section 55, 56 and 57.

10. Learned Advocate for the petitioner has also relied on Section 59 which reads as under

10.1 “(59)Hearing to be given before order under Section 55, 56 or 57 is passed.

(1) Before an order under Section 55, 56 passed against any person the officer under and of the said sections or any officer above the rank of an Inspector authorised by that officer's shall inform the person in writing of the general nature of the material allegations against him and give him a reasonable opportunity of tendering an explanation regarding them. If such person makes an application for the examination of any witness produced by him, the authority or officer concerned shall grant such application; and examine such witness unless

for reasons to be recorded in writing, the authority or officer is if opinion that such application is made for the purpose of vexation or delay. Any written statement put in by such person shall be filled with the record of the case. Such persons shall be entitled to appear before the officer proceeding under his section by an advocate or attorney for the purpose of tendering his explanation and examining the witnesses produced by him.

(2) The authority or officer proceeding under sub-Section (1)may, for the purpose of securing the attendance of any person against whom any order is proposed to be made under Section 55, 56 or 57, require such person to appear before him and to pass a security bond with or without sureties for such attendance during the inquiry. If the person fails to pass the security bond as required or fails to appear before the officer or authority during the inquiry, it shall be lawful to the officer or authority to proceed with inquiry and

thereupon such as was proposed to be passed against him may be passed."

11. Learned Advocate for the petitioner has placed reliance on the Division Bench judgment of this Court in the case of Chothamal Sagansingh Rajput Vs. State of Gujarat and others (Coram:C.J., P.R. Gokulakrishnan & R.J. Shah,J.) reported in 1989 (30) (1) GLR 63, wherein division bench of this Court observed as under,

11.1 "(6). As far as the present case is concerned, the Superintendent of Police, who heard the explanation and arguments, closed the arguments as early as in September 1987. Only on 19.02.1988, the Superintendent of Police has sent the report to the externing authority, who is the Deputy Commissioner of Police, Doabiya has stated that the delay has occurred due to the fact that he was required to visit various Police Stations on various dates for checking various aspects of the Police Administration, including the papers regarding the Police investigations. He has

also stated that on several occasions on various dates, he remained busy with the Police Bandobast. Regarding the details of such work he has performed, the Superintendent of Police has attached Annexure 'A' to his affidavit-in-reply. Through my learned brother R.J. Shah, I was able to get Annexure 'A' translated into English. It is clear from Annexure 'A' that the officer concerned, without giving any particulars as regards the time, has generally stated that he was busy in various other duties on a particular day. Such type of vague and prototype assertion regarding the work performed on each day cannot, in our opinion, substantiate the genuineness of the delay caused in this case. When especially a person, who is dangerous to the society, is sought to be externed, the authorities concerned should expeditiously take action, instead of giving reasons, which in our opinion are not acceptable is condone such inordinate delay. Reading Annexure 'A' along with the affidavit-in-reply field by the Superintendent of Police, we are not convinced

in respect of the reasons given by the Superintendent of Police in sending the report with a delay of nearly five months. Mr. B.D. Desai cited the decision in the case of *Banas Domnic Miranda Vs. A.K. Ankola & Others,* 1982 Cri.L.J. 2059 to show that mere delay in passing the externment order cannot be fatal to quash such an order. In this case, the Bench of the Bombay High Court has clearly stated that the delay in passing an order of externment is not *ipso facto* fatal to the externment order, for in certain cases delay may be unavoidable and reasonable, Thus, it is clear that if the delay in unavoidable and reasonable, the explanations can be accepted. As far as the present case is concerned, looking to the affidavit of Superintendent of Police and also Annexure 'A' attached to his affidavit, it does not spell out any unavoidable and reasonable explanation for such an inordinate delay in sending the report to the externing authority."

12. Learned Advocate for the petitioner has

relied upon Division Bench Judgment of this Court (Coram: J.U. Mehta & B.J. Shethna,J.J.)in the case of Santosh Ramprasad Sharma Vs. Deputy Commissioner of Police, Crime Branch, Ahmedabad City, A'bad & The State of Gujarat reported in 1992 Cr. L.R. (Guj.) 360. In Para 8 and 9 of the said judgment Division Bench has observed as under,

12.1 “(8). In our opinion, there is much force in the argument advanced on behalf of the petitioner. In externing a person, which is in the public interest, the authorities are expected to act promptly and if they delay the matter, the same will spell out that there is no urgent need nor necessity to extern a person from a particular locality or the District. The externment orders curtail the freedom of movement of the person concerned, and, therefore, any laches on the part of the authority concerned can not be countenanced and the benefit will go to the party concerned and on that score, the externee will be entitled to the benefit of quashing such an order of externment.

12.2 (9). In the present case, the arguments were submitted by the externee on 04.04.1991 and, therefore, the proceedings were concluded on that day and the Externing Authority has passed the order only on 21.08.1991 i.e. after the delay of four months. No affidavit is filed to explain the delay caused in passing the order. Nothing is shown by the learned Additional Public Prosecutor from the record to explain the delay on the part of the Externing Authority in passing the impugned order. It is true that mere delay in passing externment order cannot be fatal to quash such an order but, in our opinion, the delay must be explained. In the present case, there is a delay of nearly four months in passing the externment order subsequent to the submission of the explanation and the arguments by the petitioner herein and there is no explanation coming forth in any form. Therefore, in our opinion, the delay in the present case will vitiate the externment order passed by the

authority concerned.”

13. Learned Advocate for the petitioner has further stated that order of detention passed by the detaining authority is bad in law on the ground that there is a unreasonable or unexplained delay in passing the order. Learned Advocate further submitted that detaining authority has not considered the provisions and objects of the Act, and therefore, in view of the long delay order of detention is liable to be quashed and set aside. In support of the same, learned Advocate has placed reliance on one un-reported Division Bench judgment of this Court in Special Criminal Application No.1295 of 1994 decided on 24.06.1995 (Coram: K.J. Vaidya & S.D. Dave,J.J.)in the case of Vasantiben Mukeshbhai Rander Vs. State of Gujarat. The Division Bench has considered scheme and object of the act and in internal Para 4 observed as under,

13.1 “The above said may be a sorry state of affairs. The proposed externee definitely can be said to be guilty of adopting an attitude which has resulted into the

procastination of the proceedings. The question which worries us and which has caused anxiety is, as to whether under the provisions contained under Section 56 of the Bombay Police Act, 1951 such a long time could have been made available to the externee. In our opinion on a plain reading of this provisions the answer to the above said questions must be in a clear negative. What all Section 56 of the Bombay Police Act, 1951 says is in respect of a notice to be given to the externee, while what all Section 59 of the Act of 1951 says is in respect of the hearing to be given to the proposed externee. A conjoint reading of the above said two provisions of the Act of 1951 would make it clear that the removal of a person can be ordered out of a particular area upon certain apprehension. So far as the procedural formalities are concerned the officer is required to inform the person in writing of the general nature of the material allegations against him and to give him a reasonable opportunity of tendering an explanation regarding them. If such a person

make an application for the examination of the witnesses to be produced by him, the authority concerned shall grant such application and may examine the witnesses. Any written statement put by such person should be filed with the record of the case and such a person shall be entitled to appear before the officer proceeding against him by a n advocate or attorney for the purpose of tendering his explanation and examining the witnesses produced by him. Thus, even on a casual reading of the provisions contained under Section 59 of the Bombay Police Act, 1951, we feel that all what is required to be done is to give the proposed externee a reasonable opportunity of tendering an explanation regarding the general nature of the material allegations against him. The whole idea of the Law Makers, to enact such a procedural aspect embodied in the very powers to extern an individual appears to have been nourished with the prime object of affording a reasonable opportunity of being heard to a person who is proposed to be externed out of a

particular area. The terms 'reasonable opportunity' which appears in the above said provision cannot be stretched to a position in which the proposed externee or the learned advocate representing his cause, would be able to drag and procastinate the proceedings for an unduly lengthy period. We are justified in our above said conclusion also from the view point of the provisions contained under the Act under which a person can be directed to remove himself out of a particular locality. This all is being done on the basis of a belief that a particular person acts in a particular fashion in a particular locality and that his acts and deeds within the locality are required to be checked or a close watch on his activities which are grown to a considerable extent in a particular locality. The man is proposed to be externed, so that the network which he could have established in that particular locality with the assistance of his associates and the under world elements may be snapped for a considerable long time; so that there could be an immediate end to his

activities. The idea behind the concept appears to be a two fold one; firstly, send out a man who is engaged in anti-social activities in a particular area, and secondly, save the area and the people residing therein from a person and his illegal activities. The whole idea is to destroy an established network which an under world element has been able to create in a particular locality. This very idea have revolving around the above said provisions of Bombay Police Act, 1951, makes it obligatory that the whole exercise must be done as expeditiously as possible and within a reasonable time frame."

14. The unreported Division Bench judgment of this Court in the case of Vasantiben Mukeshbhai Rander(Supra) has been followed by this Court in S.C.A. No.63 of 1996 in the case of Sitaben M. Thakore Vs. Deputy Commissioner of Police, decided by this Court (Coram: N.N. Mathur, J.)reported in 1997 Cr.Lr. (Guj.)139 GLH wherein learned single Judge on Page 142 observed as under,

14.1 “Thus, whosoever may be the responsible whether the externee or the authority for delay of proceedings, the very purpose of the exercise of powers U/s. 58 are frustrated if the same is not exercised within a “reasonable period”, because the grounds which existed for externment which required an immediate action, cannot be said to have continued for a long period.”

15. Learned Advocate for the petitioner submitted that in view of the scheme of the provisions of the Act and in view of the division bench judgment in the case of Chothamal Sagansingh Rajput (Supra) and judgment of the learned single Judge in the case of Sitaben M. Thakore (Supra) if there is any unreasonable and unexplained delay from the date of notice till passing of the order then in view of the same order is liable to be quashed and set aside.

16. On the other hand, Mr. Pujari, learned A.P.P. has tried to support the order of externment passed by the authority in this behalf. He has stated that it is no doubt true that hearing took place in August,

2004 but detention order under the provisions of PASA Act was passed in November, 2004; whereas this Court disposed of the matter on 1st March, 2005. Therefore, considering that period authority could not have passed the order of externment in this behalf. Thereafter, authority took some time and even if there is delay same is justified and therefore this Court may not set aside the order of externment only on the ground of delay and allow present petition. He has tried to distinguish the judgments of division bench as well as judgment of the learned single Judge in this behalf.

17. Mr. Pujari, learned A.P.P. has relied on the division bench judgment of this Court in the case of Mukesh Gopal Patel Vs. N.I. Saiyed, Dy. Commissioner of Police, Ahmedabad and Another reported in 1987 (1) GLH (NOC)6.

18. Learned Counsel for the respondent has also stated that when the authority has passed the order of externment they have to follow the rules of natural justice in this behalf. He has relied upon the judgment of the apex court (Coram: R.A. Sarkaria, D.A.

Desai & O. Chinnappareddy,J.J.J.)in the case of Swadeshi Cotton Mills Vs. Union of India reported in AIR 1981 SC 818 and also another Division Bench judgment of the apex Court (Coram: V.R. Krishna Iyer & A.C. Gupta) in the case of The Chairman, Board of Mining Examination and Chief Inspector of Mines and Another Vs. Ramjee reported in AIR 1977 SC 965.

19. I have considered the provisions of the Act as well as division bench judgment and judgment of the learned single Judge in this behalf also.

20. It is no doubt true that final hearing took place in August, 2004 and order of externment was passed on 25.07.2005. In between when the authority has passed the order under PASA Act on 01.11.2004 and this Court has quashed and set aside the said order on 10.03.2005, the period between November,2004 to March,2005 can be explained and authority might reasonably feel that when proceedings under PASA Act was going on it may not pass the order. Mr. Pujari, learned A.P.P. is partly right in his submissions. But, in this case final hearing took place in August,2004 and thereafter August, September and

October three months have passed before order under the provisions of PASA Act is passed. This Court quash and set aside the order of detention on 10.03.2005, and thereafter, April, May, June and even some part of the July is left and order is passed on 25th July, 2005. For these two periods no explanation has been given by the authority in this behalf as to why the order has been passed so late.

21. In my view Section 56 of the Bombay Police Act empowers authority, empowered by the state government to pass an order of removal of persons on the satisfaction that (a) the movements or acts of any person are causing or calculated to cause alarm, danger or harm to person or property, or (b) that there are reasonable grounds for believing that such person is engaged or is about to be engaged in the commission of an offence involving force or violence or an offence punishable under Chapter XII, XVI or XVII of the Indian Penal Code, or in the abetment to any such offence, and when in the opinion of such officer witnesses are not willing to come forward to give evidence in public against such person by reason of apprehension on their part as regard the safety of

their person or property, or that an outbreak of epidemic disease is likely to result from the continued residence of an immigrant, the said officer may, by an order in writing duly served on him or him or by beat of drum or otherwise as the think fit, direct such person or immigrant so to conduct himself as shall seem necessary in order to prevent violence and alarm or the outbreak or spread of such disease or to remove himself outside the area within the local limits of his jurisdiction [or such area and any district of districts, or any part thereof, contiguous thereto] by such route and within such time as the said officer may prescribe and not to enter or return to the said area [or the area and such contiguous districts, or part thereof as the case may be,} from which he was directed to remove himself.

22. It is, of course, true before passing order of externment it is necessary to rationally consider about principle of natural justice in this behalf. In this context I have also to consider what is principle of 'natural justice' and what is meant by 'natural justice'.

23. Rules of Natural Justice have developed with the growth of civilization and the content thereof is often considered as a proper measure of the level of civilization and Rule of Law prevailing in the community as observed in the case of K.I. Shephard Vs. Union of India reported in (1987) 4 SCC 431, 488.

24. “(13). Natural justice is another name for common-sense justice. Rules of natural justice are not codified cannons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a common-sense liberal way. Justice is based substantially on natural ideals and human values. The administration of justice is to be freed from the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties. It is the substance of justice which has to determine its form.

24.1 (14). The expressions “natural justice” and “legal justice” do not present a watertight classification. It is the substance of justice which is to be secured by both, and whenever legal justice

fails to achieve this solemn purpose, natural justice is called in aid of legal justice. Natural justice relieves legal justice from unnecessary technicality grammatical pedantry or logical prevarication. It supplies the omissions of a formulated law. As Lord Buckmaster said, no form or procedure should ever be permitted to exclude the presentation of litigant's defence.”

[**REFERENCE**: Para 22 & 22.1, *Canara Bank Vs. Debasis reported in (2003)4 SCC 557, Para-13 & 14.]*

25. The concept of natural justice is not static one but is an ever expanding concept. Initially there were two elements viz. Hearing the other side and that a person shall not be a judge of his own cause. With the passage of time, the third element is introduced i.e. procedural reasonableness as observed by the Hon'ble apex Court in the case of Dr. Rash Lal Yadav Vs. State of Bihar reported in (1994)5 SCC 267.

26. The matter can also be examined in slightly different context as is done by the Hon'bel apex Court in the case of Anil Rai Vs. State of Bihar reported in

(2001)7 SCC 318 wherein when the arguments before a Division Bench of the High Court concluded the judgment was reserved by it on 23.08.1995. In that matter in the meanwhile one of the convicted persons died in jail. It was only when one of the Judges of the Division Bench reached near the date of his superannuation that the Bench ultimately pronounced the judgment on 14.08.1997. In criminal matters the Hon'ble Supreme Court in Paras 2,4 and 8 observed in connection with the delay in giving judgment which is as under,

> 26.1 “(2). The inordinate, un-explained and negligent delay in pronouncing the judgment is alleged to have actually negatived the right of appeal conferred upon the convicts under the provisions of the Code of Criminal Procedure. It is submitted that such a delay is not only against the provisions of law but in fact infringes the right of personal liberty guaranteed by Article 21 of the Constitution of India. Any procedure or course of action which does not ensure a reasonable quick adjudication has been termed

to be unjust. Such a course is stated to be contrary to the maxim actus curiae neminem gravabit, that an act of the Court shall prejudice none.

26.2 (4). it has been held time and again that justice should not only be done but should also appear to have been done. Similarly, whereas justice delayed is justice denied, justice withheld is even worse than that. This Court in Madhav Hayawadanrao Hoskot Vs. State of Maharashtra observed that the procedure contemplated under Article 21 of the Constitution means “fair and reasonable procedure” which comports with civilized norms like natural justice rooted firm in community consciousness-not primitive processual barbarity nor legislated normative mockery. Right of appeal in a criminal case culminating in conviction was held to be the basis of the civilised jurisprudence. Conferment of right of appeal to meet the requirement of Article 21 of the Constitution cannot be made a fraught (sic fraud) by protracting the

pronouncement of judgment for reason which are not attributable either to the litigant or to the State or to the legal profession. Delay in disposal of an appeal on account of inadequate number of Judges, insufficiency of infrastructure, strike of lawyers and circumstances attributable to the State is understandable but once the entire process of participation in the justice delivery system is over and the only thing to be done is the pronouncement of judgment, no excuse can be found to further delay for adjudication of the rights of the parties, particularly when it affects any of their rights conferred by the Constitution under Part III.

26.3 (8). the intention of the legislature regarding pronouncement of judgments can be inferred from the provision of the Code of Criminal Procedure. Sub-Section (1) of Section 353 of the code provides that the judgment in every trial in any criminal Court of original jurisdiction, shall be pronounced in open Court *immediately*

after the conclusion of the trial or on some subsequent time for which due notice shall be given to the parties or their pleaders. The words ”some subsequent time” mentioned in Section 353 contemplate the passing of the judgment is opposed to the principle of law. Such subsequent time can at the most be stretched to a period of six weeks and not beyond that time in any case. The pronouncement of judgments in the civil case should not be permitted to go beyond two months.”

27. The Hon'ble Supreme Court has referred to sub-Section (1) of Section 353 of Code of Criminal Procedure and also referred to Para 9 and in Para 10 issued some guidelines. In view of this, it appears that not only in preventive detention matter, but in ordinary criminal matters also; the Hon'ble Supreme Court has emphasized that all subordinate Courts and even High Courts should give the judgment within the reasonable time.

27.A Learned Advocate for the applicant stated that the Hon'ble apex Court has also taken the same

view in the case of Kanhaiyalal and Others Vs. Anupkumar and Others, reported in (2003) 1 SCC 430. Learned Advocate for the applicant has further stated that the Division Bench of this Court (Coram: R.S. Garg and K.M. Mehta,J.J.)has also placed reliance on the aforesaid judgment in the case of Kanhaiyalal and Others(Supra)in First Appeal No.477 of 2004 in the matter of Ramkishan Guru Raghunathdasji Vs. Ramavtar Bansraj Singh decided on 28.09.2005. In the said judgment, Division Bench of this Court in Para 3 observed as under,

> 27.A.1 “Order XX, Rule 1 of Civil Procedure provides that when the judgments are to be pronounced after the case has been heard, the Judge shall pronounce the judgment in the open Court either at once or as soon as thereafter as may be practical and when the judgment is to be pronounced on some future day, the Court is obliged to fix such date. Rule 1 further provides that if the judgment is not pronounced at once, every endeavor shall be made by the Court to pronounce the judgment within thirty days from the date on

which the hearing of the case was concluded and if that is also not possible, then the learned Judge is required to record the reasons for such delay."

28. In view of the above, I have considered provisions of Section 56 and 59 of the Bombay Police Act. I have also considered an unreported judgment of Division Bench judgment of this Court in the case of Vasantiben Mukeshbhai Rander(Supra)and also another Division Bench Judgment of this Court in the case of Chothamal Sagansingh Rajput(Supra) and judgment of the learned Single Judge in the case of Sitaben M. Thakore(Supra)in this behalf. I have also considered recent judgment of the apex Court in the case of Anil Rai(Supra) and also another apex Court decision in the case of Kanhaiyalal and Others in the case of Ramkishan Guru Raghunathdasji(Supra).

29. From the record it appears that in this case show-cause notice was issued on 16.04.2004 whereas final order of externment was passed on 25.07.2005. Even if we take that meanwhile detention order dated 01.11.2004 was quashed and set aside by the Hon'ble

High Court on 10.03.2005 and considering that fact detaining authority could not have passed the externment order. Therefore, whereas show-cuase notice was issued on 16.04.2004 and order of detention under PASA Act was quashed and set aside on 10.03.2005 and again there is delay of four month. In my view authority has not explained delay in passing the order. Therefore, unexplained delay is fatal to the case and therefore order of externment deserves to be quashed and set aside. On this very ground of delay and taking over all view of the matter,particularly, provisions of externment, in my view externing authority must satisfy subjectively that no witnesses are willing to come forward to depose against the petitioner before passing the order of externment. In this case the authority has passed order of externment after a great delay which could have been avoided in this behalf. Therefore, the order passed by the externing authority is unreasonable and unjustifiable in this behalf.

30. In view of this it is high-time that authority may take into consideration these aspects. Even there is possibility that in some exceptional

matters some delay may be caused, but, ordinarily once the matter is heard the authority must come out with a decision as soon as possible i.e., within reasonable time. It is also needless to say that authority should refer judgments of Hon'ble apex Court as well as of this Court, especially, when those judgments are binding to them and when an Advocate point out those judgments, the authority must refer and discuss them in this behalf. Therefore, this Court is of the view that the authority neither refer the judgment nor follow the judgment and mechanically passed the order of externment without applying its mind in this behalf and same is liable to be quashed and set aside.

31. It is high-time that the Chief Secretary should draw the attention of the Detaining Authorities and Externing Authorities to the declaration of law contained in the Apex Court Judgment and various decisions of this Court, which can serve as guidelines for them while passing appropriate orders within reasonable period of time. In the result, this petition is allowed and order of externment dated 03.10.2005 is quashed and set aside. Rules is made absolute. Direct service permitted.

(K.M.MEHTA,J.)

Umesh/